with the prosecution evidence when material facts are being considered point by point. The process the jury were advised to adopt was fraught with risks of error and omission to view a relevant fact from all angles. The directions concerning the axe is as good an illustration as any.

Appeal allowed.

Solicitors: *Cheang Lee & Ong.*

CHOW KAY KONG v. CHING TONG & ORS.

[F.C. (Barakbah L.P., Azmi C.J. (Malaya) and Ong Hock Thye F.J.) March 6, 1967]

[K.L. — Federal Court Civil Appeal No. X. 81 of 1966]

Negligence — Motor accident — Conflicting evidence — One defendant admitting liability in magistrates' court — Whether this can be taken into account — Contributory negligence — Whether other defendants precluded.

Damages — Contributory negligence alleged against first defendant who had pleaded guilty in a criminal proceedings — Whether case of contributory negligence precluded.

Evidence — Admissibility — Conviction — Motor-car and lorry in collision — Negligence alleged against both drivers — Whether first defendant's plea of guilty rightly admitted as an admission.

A motor-car in which the plaintiff was a passenger collided with an oncoming lorry and as a result the plaintiff was seriously injured. He sued the driver of the car and the owners of the lorry, respectively the first and second defendants. The negligence alleged against one or the other or both of them was in identical terms. The first defendant entered no appearence. The second defendants denied all negligence on the part of their servant and alleged all negligence against the first defendant. The plaintiff and the second defendants were the only parties heard at the trial. At the trial there was conflicting evidence. The learned trial judge admitted in evidence the notes of proceedings in the magistrates' court where the first defendant had pleaded guilty to a charge of careless and inconsiderate driving under section 30(1) of the Road Traffic Ordinance and held the absent first defendant solely responsible. In this appeal the plaintiff sought to make the second defendants liable for contributory negligence. The main question raised in the appeal was whether the learned trial judge was right to treat the first defendant's plea of guilty to the charge preferred against him as an admission of such a nature as to preclude the court from entertaining a case of contributory negligence against the other defendants.

Held: as the first defendant had had every opportunity to explain his previous unqualified admission of liability and did not seek to lay the blame or part of the blame elsewhere, the trial judge was right in taking into account the first defendant's plea of guilty and precluding a case of contributory negligence against the other defendants. Further, where the evidence on both sides was so evenly balanced that the judge had to look for evidence elsewhere to decide the issue, it is abundantly clear that the appellant had failed to discharge the onus of proof which rested on him as plaintiff.

Cases referred to:—

(1) *Hollington* v. *Hawthorne* [1943] K.B. 27.

(2) *Ingram* v. *Ingram* [1956] 2 W.L.R. 782.

(3) *Robins* v. *National Co. Ltd. & Ors.* [1927] A.C. 515.

FEDERAL COURT.

Denis Murphy for the appellant.

J. McWilliam for the respondents.

Cur. Adv. Vult.

Ong Hock Thye F.J.: The appellant was a passenger in a motor-car which collided with an oncoming lorry on December 28, 1959. He suffered rather serious permanent injury to his right arm. Almost five years later he brought an action for damages against the driver of the car and the owners of the lorry, respectively the first and second defendants, alleging negligence, in identical terms, against one or the other or both of them.

The first defendant entered no appearance. The second defendants denied all negligence on the part of their servant or agent driving their lorry and alleged negligence against the first defendant in the manner pleaded by the appellant in his statement of claim, particulars whereof these defendants adopted.

In the event the appellant and the second defendants were the only parties heard at the trial before Ali J., who held the absent first defendant solely responsible and awarded damages against him with costs. As regards the successful second defendants' costs he made the *Bullock* order.

In this appeal it is now sought to make the second defendants liable for contributory negligence and I have little doubt that this is because the appellant has scant hopes of recovering from the first defendant.

As usual in such cases there was a strong conflict of evidence. The learned judge consequently felt it necessary to "examine other evidence to ascertain which of the two versions could be accepted." He found it in the notes of criminal proceedings arising out of the same accident for which the first defendant had been charged in the magistrates' court with an offence under section 36(1) of the Road Traffic Ordinance, 1959. He had pleaded guilty and been fined $30. I now quote from the judgment on this point:

"From the record of the proceedings he appeared to have admitted as correct the facts which were outlined by the prosecuting officer who had stated that the defendant's car was travelling on the crown of the road. How this fact came to be stated by the prosecuting officer is not necessary for me to enquire, but it remains established that the first defendant had admitted to the allegation that when the collision occurred he was travelling on the crown of the road. Such an admission in my opinion would be sufficient in view of the authorities cited to induce me to conclude that the first defendant was solely to blame for the collision. As this conclusion on liability is in accord with what has been pleaded by the plaintiff in this case (see paragraph 2 of the statement of claim) judgment was therefore

entered against tne first defendant. In the course of the hearing it was apparent that the plaintiff would have wanted judgment against the second defendant as well on the basis of contributory negligence. Having regard to the facts, particularly that which had been admitted by the first defendant, I do not think it was open to me to conclude that the driver of the motor lorry was to share the blame for the accident."

The main question raised in this appeal is whether the learned trial judge was right to treat the first defendant's plea of guilty as an admission of such a nature as to preclude the court from entertaining a case of contributory negligence against the other defendant.

I note that oral judgment was given the day after the trial. Reading the judgment itself it is clear that the judge had taken time to consider not only the authorities cited to him but also the facts. Perhaps, with respect, the phrase he used, "not open to me etc.," could have been more happily worded. Nevertheless, in the same sentence and in the context of the judgment as a whole, due regard had been given to the facts in evidence. The first defendant had had every opportunity to explain his previous unqualified admission of liability. He did not seek to lay the blame, or a part of it elsewhere. The judge, in my opinion, quite rightly took this fact into account: see *Hollington* v. *Hewthorne* [1] and *Ingram* v. *Ingram.*[2] For my own part, I think it is sufficient to say that, where the evidence on both sides was so evenly balanced that the judge had to look for evidence elsewhere to decide the issue, it is abundantly clear that the appellant had failed to discharge the onus of proof which rested on him as plaintiff: see *Robins* v. *National Co. Ltd. & Ors.*[3] Were I to try the case myself I should have come to the same conclusion.

I would accordingly dismiss the appeal with costs.

Barakbah L.P. and **Azmi C.J. (Malaya)** concurred.

Appeal dismissed.

Solicitors: *Murphy & Dunbar; Laycock & Ong.*

LEE CHIANG SENG & 9 ORS. v. PUBLIC PROSECUTOR

[A.Cr.J. (Winslow J.) March 8, 1967]

[Singapore — Magistrates' Appeals Nos. 157 - 164, 196 and 218 of 1967]

Road Traffic — Use of vehicle as public service vehicle without being licensed as such — Forfeiture — Need for strict proof of seizure — Road Traffic Ordinance, 1961, s. 50 — Road Traffic (Amendment) Act, 1966.

Criminal Law and Procedure — Charge — Defect in — Mistake as to form only.

There are three prerequisites that must be satisfied before an order of forfeiture can be made under section 50 of the Road Traffic Ordinance, 1961, namely (a) the vehicle had been used in the commission of an offence under section 50(1); (b) the said vehicle had been seized under section 50(4), and (c) the Public Prosecutor had made a written application for forfeiture. Where Parliament has given powers of seizure to the executive to be followed by forfeiture on the written application of the Attorney-General (and even an innocent third party who may own the car has no remedy and the courts are deprived of any power to exercise any discretion in the matter of forfeiture) the three prerequisites to such an order should be strictly proved and if the court is left in doubt as to what took place no such order should be made.

In this case the charge followed the following lines:

"That you, at or about . . . on . . . at . . . used motor car . . . as a public service vehicle when it (*sic*) was not in force in respect of such vehicle a public service vehicle licence and thereby committed an offence under section 50(1) punishable under section 59(2) of the Road Traffic (Amendment) Act, 1966."

Held: the ingredients of the particular offence required to be proved under section 50 of the Road Traffic Ordinance, 1961 have been clearly set out and any mistake in referring to section 50 of the Road Traffic Ordinance, 1961 as section 50 of the Road Traffic (Amendment) Act, 1966 was not so defective as to vitiate a conviction under that section on that ground alone because it was a mistake as to a matter of form only.

Cases referred to:—

(1) *R.* v. *Koomah* (1874), 3 Ky. 66.

(2) *Powell* v. *Kempton Park Racecourse Co. Ltd.* [1899] A.C. 143, at p. 160.

(3) *Deputy Public Prosecutor* v. *Tan Ah Guat* [1947] M.L.J. 32.

(4) *Tai Theong & Anor.* v. *R.* [1947] M.L.J. 11.

(5) *R.* v. *Ong Suan* [1933] M.L.J. 17.

MAGISTRATE'S APPEAL.

Dato' David Marshall for the appellants.

N. Ganesan for the respondent.

Winslow J.: The first 9 appeals listed above in which the appellants had pleaded guilty to using the respective motor vehicles driven by them on 15th July, 1966, in effect, as taxis, without their being licensed as such, were argued before me on 8th February, 1967.

Mr. Marshall, counsel for the appellants, sought and obtained permission to argue and to add grounds of appeal against the validity of the convictions as well which had been challenged in the original notices of appeal filed by the appellants but had not been included in the subsequent grounds of appeal. The deputy public prosecutor, Mr. Ganesan, raised no objections provided he was given an opportunity of an adjournment should the occasion arise and at the close of Mr. Marshall's submissions he renewed his application which I granted.

The same 9 appeals came on for continued hearing on 3rd March, 1967 when the 10th appeal listed above was added as it involved similar facts and similar grounds of appeal. The main difference between the 10th appeal and the preceding 9 lies in the fact that the 10th